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STATE OF MICHIGAN
**Department of
Human
Services**

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Maura Corrigan, Director

**MICHIGAN DOMESTIC
VIOLENCE AND SEXUAL
ASSAULT PREVENTION
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Debi Cain, Executive Director

Rep. John Walsh, Chairperson
House Judiciary Committee
Anderson House Office Bldg.
124 N. Capitol
N-698 House Office Building
Lansing, MI 48933

Re: SB 845, 846, 847, 848 (Penalties for domestic violence and strangulation)

Dear Rep. Walsh:

I am writing on behalf of the Michigan Domestic Violence & Sexual Assault Prevention & Treatment Board to express the Board's support for SB 845 – 848.

SB 845 would amend MCL 769.4a so that a charge against a first-time domestic violence offender that was previously dismissed under this statute would be treated as a conviction for purposes of seeking enhanced penalties against an offender who subsequently commits another domestic assault. The Board supports this bill because domestic assault perpetrators whose behavior is not deterred by past criminal justice interventions pose a serious threat to the safety of victims and the public. Swift, sure sanctions are needed to promote victim safety and offender accountability in cases involving repeat offenders who have continued their violence despite opportunities to change. The Penal Code's graduated penalty sanctions for repeat domestic assault offenders are currently undermined by MCL 769.4a to the extent that previously dismissed charges are not counted in determining the number of an offender's previous convictions. Essentially, MCL 769.4a provides a "free pass" for the first offense. This "free pass" exposes victims to continued abuse, and sends a message that domestic violence – even repeat domestic violence – will not be taken seriously by the justice system. SB 845 promotes offender accountability and victim safety by allowing prosecutors and courts to consider a larger context of violent acts in imposing appropriate penalties on repeat offenders.

SB 847 would increase the current penalties imposed on some repeat domestic assault offenders. SB 846 would conform the sentencing guidelines to the changes introduced by SB 847 and SB 848. (SB 848 is discussed below). The Board supports these bills because longer prison terms for repeat offenders will promote the safety of their victims and the public. Indeed, increased penalties may prevent homicide in some cases. In one study of domestic violence homicides and attempted homicides involving female victims, 70% of women who were killed by their intimate partners had been previously physically abused by them. Of women who survived a homicide attempt, 71% had been physically abused by their partners.¹

SB 848 would amend MCL 750.84 to specify that a person who assaults another by strangulation or suffocation is subject to the felony penalties imposed by that statute. MCL 750.84 currently applies to those who assault others with intent to do great bodily harm less than murder. The Board supports SB 848 as an important tool in deterring a common form of intimate partner violence that too often results in serious injury or death. Various studies have found that:

- 30-68% of women in abusive relationships have been strangled by their partners at some point in the relationship.²
- Fatal strangulation occurred in 17.5% of Chicago domestic violence homicides where male offenders killed female victims.³



RICK SNYDER, Governor

- At least 56.4% of murdered abused women were previously strangled by their abusers.⁴
- 87% of incidents of nonfatal strangulation were accompanied by death threats.⁵

Strangulation victims experience severe pain, unconsciousness, and brain death, caused when the perpetrator blocks the flow of oxygen to and from the brain through the victim's blood vessels or airway. Strangulation can easily become a homicide. Eleven pounds of pressure placed upon both carotid arteries for ten seconds will cause unconsciousness. To completely close off the trachea, three times as much pressure (33 lbs.) is required. Brain death will occur in 4 to 5 minutes, if strangulation persists.⁶

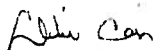
Strangulation causes injuries ranging from scratches and voice changes to paralysis and death. However, injuries from strangulation are not externally evident in many cases, even when the assault is fatal. It is also common for injuries to first appear some hours or days after an assault, and even then the injuries may not fully reveal the extent of the underlying physical damage. For example, swelling of the neck may be caused by internal bleeding or fractures of the larynx. Seemingly mild breathing problems may be the only indication of serious injuries that can result in death up to thirty-six hours after an assault. Miscarriages may occur hours or days after strangulation has occurred. Additionally, long-term mental health problems such as amnesia, depression, and psychosis can develop due to the loss of oxygen to the brain during strangulation.⁷

Despite the potential for serious or fatal injury from strangulation or suffocation, it is often difficult to successfully prosecute serious charges against perpetrators, because the applicable Michigan felony assault statutes require evidence of circumstances that are absent from or difficult to establish in these cases. For example, the statutes governing assault with intent to commit murder (MCL 750.83) and assault with intent to do great bodily harm less than murder (MCL 750.84) require the prosecutor to prove that the perpetrator intended to commit murder or do great bodily harm. This showing of intent is often difficult in cases involving strangulation or suffocation, in part due to the lack of physical evidence of injury that is discussed above. As a result, strangulation and suffocation are too often prosecuted under the misdemeanor assault statutes (MCL 750.81 and 750.81a). This allows perpetrators to escape accountability for their actions, and leaves their victims at risk of future deadly violence.

The addition of strangulation and suffocation to MCL 750.84 recognizes the reality that these crimes always carry with them the possibility of serious or fatal injury, and allows prosecutors to charge accordingly. It also brings Michigan into line with approximately 30 other states (including California, Minnesota, Nebraska, New York, North Carolina, and Oregon) that have made specific provision for strangulation in their criminal statutes.

The Board would like to thank the House Judiciary Committee for taking up SB 845-848, and for its consideration of the Board's positions. The Board also would like to thank the sponsors of these bills for their commitment to holding domestic violence perpetrators accountable for their crimes and to protecting victims and the public. Any questions about the positions expressed above can be directed to Mary Lovik, Staff Attorney to the Board, at lovikm@michigan.gov, or 517-241-7591.

Sincerely,



Debi Cain, Executive Director
Michigan Domestic Violence and Sexual Assault Prevention and Treatment Board

CC: Rep. Kurt Heise, Majority Vice-Chair
Rep. Ken Horn
Rep. Kurt Damrow
Rep. Paul Muxlow
Rep. Bradford C. Jacobsen
Rep. Peter Pettalia
Rep. Pat Somerville
Rep. Kevin Cotter
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Sen. Steven Bieda
Karyn Ferrick
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Jeffrie Cape, LMSW
Kathryn A. Hoover

¹ See Praxis International, *Risk and Lethality Assessment in the Field of Intimate Partner Violence: A Synopsis of Research*, p. 4, available online at: http://files.praxisinternational.org/Safety_Eval_Ch_2_Risk_Lethality_Assess.pdf. (Visited 11/5/12).

² See e.g., Carolyn Rebecca Block et al., The Chicago Women's Health Risk Study: Risk of Serious Injury or Death in Intimate Violence, A Collaborative Research Project 161 (2000) (56% of participants had been strangled); Holly Johnson, Risk Factors Associated with Non-Lethal Violence Against Women by Marital Partners, in Nat'l Inst. of Just., Trends, Risks, and Interventions in Lethal Violence, at 158-59 (Carolyn Block & Richard Block eds., 1995) (in a study of more than 12,000 Canadian women, 30% had been strangled by a previous marital partner); Jacquelyn Campbell et al., Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study, 93 Am. J. Pub. Health 1089, 1094 (2003) (56.4% of domestic violence victims had been strangled by their partners); Lee Wilbur et al., Survey Results of Women Who Have Been Strangled While in an Abusive Relationship, 21 J. Emergency Med. 299 (2001) (68% of surveyed victims of intimate partner abuse had been strangled previously).

³ See Carolyn Rebecca Block et al., *supra* n 2, at 132, 241, 251, 267.

⁴ Campbell, *supra*, n 2, at 1094.

⁵ Wilbur et al., *supra*, note 2, at 299.

⁶ Gael B. Strack & George McClane, How to Improve Your Investigation and Prosecution of Strangulation Cases, p. 3 (David C. James ed., 1999), available at www.ncdsv.org/images/strangulation_article.pdf. (Visited 11/7/12).

⁷ *Id.*, pp. 4-6; Dean A. Hawley et al., A Review of 300 Attempted Strangulation Cases Part III: Injuries in Fatal Cases, 21 J. Emergency Med. 317-320 (2001); Lee Wilbur et al., *supra*, n 2, at 298-301 (2001).